

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ECHOSTAR SATELLITE CORPORATION	)	File Nos. 36-DSS-LA-94; 37-DSS-P/LA-
	)	94; 154-SAT-AMEND-95
	)	
	)	Call Sign: S2143
	)	
Application for Modification	)	File Nos: SAT-MOD-20010608-00054;
of Authorization to Construct, Launch,	)	SAT-AMD-2003-0127-00003
and Operate a Ku-band Satellite System	)	
in the Fixed-Satellite Service	)	
	)	
And	)	
	)	
Request for Extension of Time to Complete	)	File No. SAT-MOD-19990329-00039
Construction and to Launch Fixed-Satellite	)	
Service Satellites	)	

**ORDER AND AUTHORIZATION**

**Adopted: August 1, 2003**

**Released: August 1, 2003**

By the Chief, Satellite Division:

**I. INTRODUCTION**

1. By this Order, we authorize EchoStar Satellite Corporation ("EchoStar") to modify its Ku-band license to include a hybrid Ku-/Ka-band satellite at the 121° W.L. orbital location.<sup>1</sup> In addition, we find that, although EchoStar has failed to provide good cause for the extension of its milestone schedule for its Ku-band authorization at 121° W.L., favorable action is warranted in order to permit the imminent launch of EchoStar's Ku-band payload aboard the "EchoStar 9" satellite.<sup>2</sup>

**II. BACKGROUND**

2. In 1996, the International Bureau ("Bureau") authorized EchoStar to construct, launch, and operate a Ku-band domestic fixed-satellite service ("FSS") satellite to be located at the 121° W.L.

<sup>1</sup> The "Ka-band" or "28 GHz band" generally refers to the space-to-earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding earth-to-space (uplink) frequencies at 27.5-30.0 GHz. The "Ku-band," as used in this Order, refers to downlink frequencies at 11.7-12.2 GHz and corresponding uplink frequencies at 14.0-14.5 GHz. In a separate order released today, we grant EchoStar's request to modify its Ka-band license at 121° W.L. to permit hybrid operations. See EchoStar Satellite Corp., *Order and Authorization*, DA 03-2559 (Sat. Div. rel. August 1, 2003).

<sup>2</sup> We will address EchoStar's application to extend its milestones for its Ku-band satellite at 83° W.L. in a separate order. See Application of EchoStar Satellite Corp., File No. SAT-MOD-19990329-00037 (filed March 29, 1999). That application was filed in the same document as EchoStar's request concerning the 121° W.L. orbital location.

orbital location.<sup>3</sup> Like all satellite licenses, EchoStar's Ku-band authorization is conditioned on EchoStar's compliance with construction progress milestones. According to EchoStar's milestone schedule, EchoStar was to have completed construction of its satellite by June 30, 1999, and was to have launched this satellite by September 30, 1999.<sup>4</sup> EchoStar's license states that its authorization shall become null and void in the event that it does not comply with this milestone schedule, unless the schedule is extended by the Commission for good cause shown.<sup>5</sup>

3. In March 1999, EchoStar filed a timely application to extend the construction completion and launch milestones for the satellite.<sup>6</sup> As discussed in detail below, EchoStar argued that regulatory uncertainty resulting from a condition on its license constituted good cause for an extension of its milestone schedule.<sup>7</sup> Accordingly, EchoStar sought to extend its construction completion milestone and the launch milestone for the satellite by 30 and 33 months, respectively, after the Commission acts on petitions for reconsideration filed by GE American Communications and PRIMESTAR Partners, L.P.<sup>8</sup> These petitions concerned EchoStar's authorization to operate a Ku-band satellite at the 83° W.L. orbital location, which was issued in the same order as EchoStar's authorization for the 121° W.L. orbital location. EchoStar did not address why action on these petitions was needed in order to proceed with implementation of its satellite at 121° W.L. EchoStar's extension application was placed on public notice in May 1999.<sup>9</sup> No comments were filed.<sup>10</sup>

4. In addition to its Ku-band authorization, EchoStar is also licensed to launch and operate a fixed-satellite service satellite in the Ka-band at the 121° W.L. orbital location.<sup>11</sup> In June 2001, EchoStar applied for further modification of its Ku-band authorization in order to enable the launch and operation of a single Ku-/Ka-band hybrid satellite at the 121° W.L. orbital location to be known as "EchoStar 9."<sup>12</sup> EchoStar asserts that the modification is in the public interest because the use of a single hybrid satellite would be more efficient and cost effective than building two satellites.<sup>13</sup> EchoStar's Ku-band modification application was placed on public notice in June 2001.<sup>14</sup> No comments were filed in

<sup>3</sup> See EchoStar Satellite Corp., *Memorandum Opinion and Order*, DA 96-1943, 11 FCC Rcd 20446 (Int'l Bur. 1996) ("*Ku-band Authorization Order*").

<sup>4</sup> See *id.* at 20451.

<sup>5</sup> See *id.*

<sup>6</sup> See EchoStar Satellite Corp., Application for Authority to Construct, Launch, and Operate Space Stations in the Domestic Fixed-Satellite Service, File Nos. SAT-MOD-19990329-00039 (filed March 29, 1999) ("*EchoStar Milestone Extension Application*").

<sup>7</sup> See *infra* paragraphs 7-8.

<sup>8</sup> See EchoStar Milestone Extension Application at 1.

<sup>9</sup> See Public Notice, Satellite Policy Branch Information: Applications Accepted for Filing, Report No. SAT-00017 (May 11, 1999).

<sup>10</sup> PanAmSat Licensee Corp. submitted late-filed comments addressing EchoStar's request to extend the milestones for EchoStar's satellite at 83° W.L., but did not address EchoStar's extension request at 121° W.L. See Comments of PanAmSat Licensee Corp., File No. SAT-MOD-19990329-00037 (filed June 11, 1999).

<sup>11</sup> See EchoStar Satellite Corp., *Order and Authorization*, DA 97-969, 13 FCC Rcd 5664 (Int'l Bur. 1997) ("*Ka-Band Authorization Order*").

<sup>12</sup> See EchoStar Satellite Corp., Application for Minor Modification of Authorization to Construct, Launch, and Operate a Ku-band Satellite System in the Fixed-Satellite Service, File No. SAT-MOD-20010608-00054 (filed June 8, 2001) ("*EchoStar Ku-band Modification Application*").

<sup>13</sup> See EchoStar Ku-band Modification Application at 2, 4-6.

<sup>14</sup> See Public Notice, Satellite Policy Branch Information: Applications Accepted for Filing, Report No. SAT-00074 (June 29, 2001).

response to the public notice.

5. EchoStar subsequently filed an amendment to its modification,<sup>15</sup> which clarified certain technical information. This amendment was placed on public notice.<sup>16</sup> No comments were filed in response to the public notice.

### III. DISCUSSION

#### A. Milestone Extension

6. The standard that FSS licensees must meet to justify a milestone extension request is set forth in Section 25.117(e) of the Commission's rules, which states that licensees that request postponement of a milestone deadline must file a verified statement that the additional time is needed because of unforeseeable circumstances beyond their control, or must point to "unique and overriding public interest concerns" that justify an extension.<sup>17</sup>

7. EchoStar observes that its Ku-band authorization was conditioned on the submission of supplemental documentation of its financial qualifications to hold a Commission license, and that failure to make such a showing would result in the automatic cancellation of EchoStar's license.<sup>18</sup> EchoStar argues that, although this supplemental documentation was submitted in a timely manner, the Commission has yet to rule on the sufficiency of its showing and the resulting uncertainty has prevented the completion of its satellite system.<sup>19</sup>

8. This justification does not constitute good cause for a milestone extension. The Commission has previously held that similar claims concerning regulatory uncertainty do not constitute a basis for granting a milestone extension request.<sup>20</sup> We also observe that EchoStar proceeded with construction of its satellite despite the existence of the financial qualifications condition on its authorization. The fact that EchoStar has proceeded with the construction of its satellite undermines any assertion that the existence of the financial qualifications condition and the absence of a Commission ruling on its supplemental showing prevented EchoStar from proceeding with construction.

9. The Commission may, however, waive its rules if there is "good cause" to do so.<sup>21</sup> Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such

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<sup>15</sup> See EchoStar Satellite Corp., Amendment to Application for Minor Modification of Authorization to Construct, Launch, and Operate a Ku-Band Satellite in the Fixed-Satellite Service, File No. SAT-AMD-20030127-00003 (filed January 27, 2003) ("Ku-band Amendment").

<sup>16</sup> See Public Notice, Satellite Policy Branch Information: Applications Accepted for Filing, Report No. SAT-00145 (rel. April 10, 2003).

<sup>17</sup> 47 C.F.R. § 25.117(e) (2002).

<sup>18</sup> See EchoStar Milestone Extension Application at 3 (citing *Ku-band Authorization Order*, 11 FCC Rcd at 20450, para. 16).

<sup>19</sup> See *id.* at 6.

<sup>20</sup> See Earth Watch Inc., *Order and Authorization*, DA 00-1305, 15 FCC Rcd 18725, 18728 (Sat. and Radiocomm. Div. 2000) (citing Norris Satellite Communications, Inc., *Memorandum Opinion and Order*, FCC 97-377, 12 FCC Rcd 22299, 22306 (1997)) (a claim of "regulatory uncertainty" does not constitute an independent basis for granting a milestone extension request, and so does not warrant an otherwise unjustified milestone extension).

<sup>21</sup> See Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3 (2001). See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) ("*WAIT Radio*"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

deviation would better serve the public interest than would strict adherence to the general rule.<sup>22</sup> Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.<sup>23</sup> We find that the present circumstances warrant a waiver of EchoStar's current launch milestone for its Ku-band satellite at 121° W.L. Although EchoStar's construction completion milestone has expired, EchoStar filed a milestone extension request in a timely manner and has in fact completed construction of Echostar 9, which is scheduled for an imminent launch.<sup>24</sup> The purpose of our milestone rules is to prevent "warehousing" of spectrum and orbital resources.<sup>25</sup> Because EchoStar has completed the physical construction of its satellite and is ready to launch the satellite in the immediate future, we find that EchoStar is not warehousing spectrum in this specific situation and that a milestone waiver will not undermine our general milestone rules. We are modifying the launch milestone in EchoStar's Ku-band authorization consistent with this determination.

## B. License Modification

10. We find that granting EchoStar authority to operate a hybrid Ka-/Ku-band satellite at the 121° W.L. orbital location serves the public interest. In past decisions, the Commission has recognized the cost efficiencies inherent in hybrid satellites and has attempted to accommodate hybrid satellites where possible.<sup>26</sup> In addition, the Commission specifically stated that it would permit Ka-band licensees such as EchoStar to build hybrid satellites where they are assigned to corresponding C- and Ku-band orbit locations, provided all other technical and service requirements for the particular band are met and the licensee files an appropriate application to modify its underlying licenses.<sup>27</sup>

11. EchoStar's Modification Application also states that the EchoStar 9 spacecraft will carry a C-band payload.<sup>28</sup> EchoStar states that Loral SpaceCom Corporation ("Loral SpaceCom") will operate this payload under the name "Telstar 13" pursuant to an authorization by Papua New Guinea ("PNG").<sup>29</sup> We have addressed issues related to this payload in a companion order authorizing modification of EchoStar's Ka-band license.<sup>30</sup> We stress, however, that the understandings, and the background for these understandings, which are provided as Annex A to the order modifying EchoStar's Ka-band license, are

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<sup>22</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>23</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>24</sup> EchoStar's counsel has indicated that the planned launch date of the EchoStar 9 spacecraft is August 7, 2003.

<sup>25</sup> See Loral SpaceCom Corp., *Memorandum Opinion, Order and Authorization*, DA 03-1045, 18 FCC Rcd 6301, 6313 (Int'l Bur. rel. Apr. 1, 2003). See also MCI Communications Corp., *Memorandum Opinion and Order*, DA 87-24, 2 FCC Rcd 233 (Com. Car. Bur. 1987).

<sup>26</sup> See, e.g., Amendment of the Commission's Space Station Licensing Rules and Policies, *Report and Order*, FCC 03-102, 18 FCC Rcd 10760 at para. 145 (rel. May 19, 2003); Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Third Report and Order*, FCC 97-378, 12 FCC Rcd 22310, 22322 (para. 31) (1997) ("*Ka-band Third Report and Order*").

<sup>27</sup> See *Ka-band Third Report and Order*, 12 FCC Rcd at 22322.

<sup>28</sup> For purposes of this Order, the "C-band" refers to frequencies in the 3700-4200 MHz and 5925-6425 MHz frequency bands.

<sup>29</sup> See Amendment at 7. Loral SpaceCom has filed a Petition for Declaratory Ruling with the Commission to add Telstar 13 to the Commission's Permitted Space Station List to serve the U.S. market in the C-band. See Loral SpaceCom Corp., Petition for Declaratory Ruling, File No. SAT-PDR-20020315-0025 (filed Mar. 15, 2002).

<sup>30</sup> See *supra*, note 1.

material considerations for the authorization contained in this Order.<sup>31</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT the application, as amended, of EchoStar Satellite Corporation, File Nos. SAT-MOD-20010608-00054 and SAT-AMD-20030127-00003, to modify its Ku-band authorization, 11 FCC Rcd 20446 (Int'l Bur. 1996) (File Nos. 36-DSS-LA-94; 37-DSS-P/LA-94; 154-SAT-AMEND-95; Call Sign S2143), IS GRANTED, and EchoStar's authorization IS MODIFIED to allow operation of EchoStar 9 as a hybrid Ka-/Ku-band satellite at the 121° W.L. orbital location in accordance with the terms, conditions, and technical specifications set forth in its application, as amended, and this Order.

13. IT IS FURTHER ORDERED that EchoStar Satellite Corporation's application to extend its construction completion and launch milestones for its Ku-band system, File No. SAT-MOD-19990329-00039, IS GRANTED to the extent indicated herein and is otherwise DENIED, and the milestone schedule contained in paragraph 17 of EchoStar Satellite Corporation's Ku-band authorization, 11 FCC Rcd 20446, 20451 (Int'l Bur. 1996), IS MODIFIED as follows:

Launched

EchoStar FSS #2	09/30/2003
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14. IT IS FURTHER ORDERED that the supplemental financial qualifications condition contained in paragraph 16 of EchoStar Satellite Corporation's Ku-band authorization, 11 FCC Rcd 20446, 20451 (Int'l Bur. 1996), SHALL BE DEEMED SATISFIED for EchoStar Satellite Corporation's satellite to be located at the 121° W.L. orbital location upon launch of the EchoStar 9 spacecraft.

15. IT IS FURTHER ORDERED that EchoStar Satellite Corporation is afforded 30 days from the date of the release of this order and authorization to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

16. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106 and 1.115, may be filed within 30 days of the date of public notice of this Order (*see* 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz  
Chief, Satellite Division

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<sup>31</sup> *See id.* at Annex A.